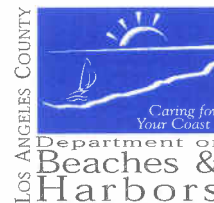




To enrich lives through effective and caring service



Santos H. Kreimann
Director

Kerry Silverstrom
Chief Deputy

Gary Jones
Deputy Director

June 18, 2013

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

30 June 18, 2013

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF AMENDMENT NO. 2 TO AMENDED AND RESTATED LEASE
NO. 74729
ESPRIT II (Parcel 15U at 4240-4250 Via Marina) - MARINA DEL REY
(FOURTH DISTRICT)
(4 VOTES)**

SUBJECT

Request for approval of Amendment No. 2 to Amended and Restated Lease Agreement for Parcel 15U extending the required construction commencement date and the required completion date for the redevelopment of the landside and waterside improvements under the lease.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Authorize the Chairman to execute Amendment No. 2 to Amended and Restated Lease No. 74729 for Parcel 15U, attached as Exhibit A, granting an extension of the required construction commencement date and the required completion date for the redevelopment of the parcel as described in the Amended and Restated Lease.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Your Board previously entered into Amended and Restated Lease Agreement (Lease No. 74729) with Esprit Two LLC, a California limited liability company (Lessee), on December 29, 2003, for Parcel 15U (Esprit II) in Marina del Rey that

called for demolition of all existing improvements (288 apartments and 215 slips) and the construction of 585 new apartments, including 47 very low-income senior units, and a new 225 slip marina, to be completed by June 30, 2009.

The Amended and Restated Lease Agreement (Lease), which was negotiated in conjunction with an Amended and Restated Lease Agreement for Parcel 12R (Esprit I), called for phased redevelopment of Esprit I and Esprit II so as to lessen the impact on Marina residents and boaters. Due to delays in the construction of Esprit I, mainly from litigation, Esprit I was not completed until August 2008. As construction for Esprit II had not commenced by the required commencement date, Lessee sought and was granted an up to four-year extension of both the required construction commencement date to no later than July 1, 2013 and the required completion date to four years after the required commencement date.

Although Esprit II received all of its entitlements at the same time as Esprit I and was able to apply for a building permit at any time that redevelopment became financially feasible, the financial markets collapsed in 2008 along with the state of the economy and continued in a downward trend until 2012. During this period, financing for real estate in general, but, more specifically, construction of redevelopment projects such as Esprit II that: a) cost in excess of \$200 million, b) had a marina component; and c) are situated on a ground lease, was virtually impossible to obtain. Over the past year, both the real estate and financial markets have begun to rebound, especially in prime areas like Marina del Rey, which makes redevelopment financing generally available again.

Notwithstanding the recent surge in interest in Marina del Rey properties, construction financing for such a large project is a complex undertaking and takes time to complete. Lessee has continued to seek financing and is only now beginning to make tangible progress in finding lending institutions and investment firms interested in projects such as Esprit II.

To take advantage of the strengthening markets, Lessee is requesting an extension of: i) the required construction commencement date to July 1, 2014 with the possibility of extending it annually three (3) additional times to no later than July 1, 2017; and b) the required completion date to the fourth anniversary of the required commencement date.

In consideration of the above potential four-year extension, Lessee has agreed to pay the County an extension fee of up to a total of \$8.15 million, payable upon exercise of each extension period in the following manner: i) \$500,000 for the first extension of the commencement date to July 1, 2014; ii) \$1 million for the second extension of the commencement date to July 1, 2015; iii) \$2.25 million for the third extension of the commencement date to July 1, 2016; and iv) \$4.4 million for the fourth and final extension of the commencement date to July 1, 2017. The fee schedule is structured to incentivize Lessee to commence

construction as quickly as possible and benefits the County by: a) providing an increase in County rents from \$630,000 per year to a proforma \$2.68 million per year upon stabilization of occupancy; and b) ensuring that the entitlements for the redevelopment do not lapse, in compliance with County policy to redevelop Marina del Rey.

The amendment also confirms the amount of deferred percentage rent which has been accrued by lessee and adjusts the schedule for repayment of the deferred percentage rent in connection with the foregoing extension.

Our economic consultant has reviewed the consideration being paid for the extension of the anticipated commencement date and the outside completion date and has found that the extension fees in the aggregate represent fair value to the County.

Implementation of Strategic Plan Goals

The recommended action will allow the Lessee to proactively redevelop its leasehold improvements, which will result in fulfillment of approved Strategic Plan Goal Nos. 1 and 4, "Service Excellence" and "Fiscal Responsibility", respectively.

FISCAL IMPACT/FINANCING

Operating Budget Impact

Upon your Board's approval of the Amendment, the County will receive a one-time \$500,000 fee as the compensation for the first year of the extension. This revenue increase is accounted for in the Department's Fiscal Year 2012-13 one-time over-realized revenues. As soon as any additional portion of the extension fee is paid, the additional amount will be included in the Adopted Budget for the year in which the money is received.

The term of the Amended and Restated Lease for Parcel 15U commenced on August 1, 1962 and expires on July 31, 2061.

County Counsel has approved the Amendment as to form.

ENVIRONMENTAL DOCUMENTATION

On December 6, 2000, the Regional Planning Commission considered and certified a combined final environmental impact report (FEIR) for Parcels 12R and 15U and adopted Findings of Fact and a Statement of Overriding Considerations regarding the FEIR for the proposed redevelopment project contemplated by both the Lease and the Parcel 15U lease. The proposed Amendment No. 2 does not raise any new or different environmental impacts.

Moreover, the proposed County consents are not a project or projects pursuant to the California Environmental Quality Act (CEQA) because each consent is an activity that is excluded from the definition of a project by Section 15378(b) of the State CEQA Guidelines. The proposed consents are an administrative activity of government which will not result in direct or indirect physical changes to the environment.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

Please authorize the Executive Officer of the Board to send two copies of the executed Amendment to the Department of Beaches and Harbors. Should you have any questions, please contact Matthew Kot at (310) 305-1439 or mkot@bh.lacounty.gov.

Respectfully submitted,

Gary Jones

for Santos H. Kreimann
Director

SK:GJ:dlg

Attachments (1)

c: County Counsel

AMENDMENT NO. 2 TO AMENDED AND RESTATED LEASE AGREEMENT
PARCEL 15U – MARINA DEL REY
(LEASE NO. 74729)

THIS AMENDMENT NO. 2 TO AMENDED AND RESTATED LEASE AGREEMENT (“Second Amendment”) is made and entered into as of _____, 2013, by and between COUNTY OF LOS ANGELES (“County”) and ESPRIT TWO LLC, a California limited liability company (“Lessee”).

RECITALS

A. County and Lessee entered into Amended and Restated Lease Agreement (Lease No. 74729) dated December 29, 2003 (“Original Lease”), as amended by Amendment No. 1 to Amended and Restated Lease Agreement (Lease No. 74729) dated March 24, 2009 (“First Amendment”), pursuant to which County leased to Lessee that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, commonly known as Parcel 15U. The Original Lease, as amended by the First Amendment, is referred to herein as the “Lease.”

B. Lessee provided the Department with a Financing Delay Notice pursuant to subsection 5.5.1 of the Lease that resulted in the extension of the Anticipated Commencement Date from July 1, 2010 to July 1, 2013.

C. As of the date of this Second Amendment, the Substantial Commencement of Construction of the Redevelopment Work has not yet occurred.

D. The parties desire to enter into this Second Amendment to further extend the Anticipated Commencement Date and the Outside Completion Date under the Lease and to make certain other modifications to the Lease as set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. Capitalized Terms. All capitalized terms used in this Second Amendment and not otherwise defined herein shall have the same meanings given to such terms in the Lease.

2. Extension of Outside Completion Date. Subsection 1.1.93 of the Lease is hereby amended in full to read as follows:

1.1.93 “Outside Completion Date” shall mean the fourth (4th) anniversary of the Anticipated Commencement Date (as such Anticipated Commencement Date may be extended in accordance with the terms of Section 5.5 of this Lease).

All references to “Outside Completion Date” in the Lease shall have the meaning set forth in subsection 1.1.93.

3. Extension of Construction Schedule. Subsection 5.5.1 of the Lease is hereby amended in full to read as follows:

5.5.1 Substantial Commencement and Completion of Construction. It is a condition of this Lease that, except to the extent Lessee is prevented from so doing by the events identified in subsection 5.5.3, Lessee shall cause the Substantial Commencement of Construction for the Redevelopment Work to have occurred on or before the Anticipated Commencement Date, and shall substantially complete the Redevelopment Work by the Outside Completion Date. For the purposes of this Lease, “Substantial Commencement” or “Substantial Commencement of Construction” means that physical construction work pertaining to the Redevelopment Work has been commenced and thereafter proceeds with diligence, provided that for this purpose the demolition work required for the commencement of excavation and new improvement construction shall qualify as physical construction work as long as such demolition work is performed on a diligent basis and is followed by excavation and new improvement construction work without interruption. The Anticipated Commencement Date and the Outside Completion Date will only be extended under the specific circumstances set forth in this Section 5.5, and under no other circumstances.

For purposes of this Lease, “Anticipated Commencement Date” means July 1, 2014, provided that Lessee shall have the option to extend such date in annual increments upon payment to County of successive installments of the Extension Payment on or before each respective required payment date set forth in Section 5 of the Second Amendment, as follows: (i) upon Lessee’s timely payment of the Second Extension Installment, such date shall be extended to July 1, 2015; (ii) upon Lessee’s timely payment of the Third Extension Installment, such date shall be extended to July 1, 2016; and (iii) upon Lessee’s timely payment of the Fourth Extension Installment, such date shall be extended to July 1, 2017. Notwithstanding any contrary provision of this Lease, there shall be no extension of the Anticipated Commencement Date for any period during which Lessee is in breach or default under this Lease.

4. Construction Delays. Notwithstanding any contrary provision of Section 5.5 of the Lease, as modified by this Second Amendment, neither the Anticipated Commencement Date nor the Outside Completion Date shall be subject to extension for any act, omission, occurrence, condition, or circumstance (including without limitation a Force Majeure event, Unreasonable Financial Market Condition or Unreasonable County Activity, if any) that first occurred or first arose prior to, or that otherwise exists as of, the date of this Second Amendment. Lessee represents and warrants to County that as of the date of this Second Amendment there is no

threatened or anticipated delay in the Substantial Commencement of Construction beyond the Anticipated Commencement Date of which Lessee is aware as of the date of this Second Amendment. Notwithstanding any contrary provision of the Lease, no future Force Majeure delay under subsection 5.5.2 of the Lease shall commence until Lessee has provided County with written notice of the occurrence, condition or circumstance that constitutes a Force Majeure event; provided, however, that if Lessee provides written notice to County of a Force Majeure event within five (5) business days after the date that the occurrence, condition or circumstance that constitutes Force Majeure first occurs or arises, then the Force Majeure delay shall commence retroactive to the date that the Force Majeure event first occurred or arose.

5. Payment For Extension of Construction Schedule. As partial consideration for County's agreement to an extension of the Anticipated Commencement Date and the Outside Completion Date, concurrent with the parties' execution and delivery of this Second Amendment, Lessee shall pay to County the sum of Five Hundred Thousand Dollars (\$500,000) (the "First Extension Installment"). Lessee shall have the option to further extend the Anticipated Commencement Date as set forth in subsection 5.5.1 of the Lease (as amended by this Second Amendment), upon payment to County of the following sums: (i) One Million Dollars (\$1,000,000) (the "Second Extension Installment"), payable on or before June 1, 2014; (ii) Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) (the "Third Extension Installment"), payable on or before June 1, 2015; and (iii) Four Million Four Hundred Thousand Dollars (\$4,400,000) (the "Fourth Extension Installment" and, together with the First Extension Installment, the Second Extension Installment and the Third Extension Installment, the "Extension Payment"), payable on or before June 1, 2016. The Extension Payment shall be treated as additional rent payable under the Lease.

6. Deferred Percentage Rent. Notwithstanding any contrary term or provision of the Lease, County and Lessee have agreed that Lessee shall be entitled to defer an aggregate of \$2,111,416 of Percentage Rent under subsection 4.3.2 of the Lease and that such amount shall be the maximum total amount of Percentage Rent that Lessee is entitled to defer under such subsection 4.3.2 of the Lease during all portions of the Term. Such amount is in full satisfaction of, and substitution for, all past and future Percentage Rent deferrals permitted under subsection 4.3.2 of the Lease. For all periods up to and through March 31, 2013 Lessee deferred Percentage Rent in the total amount of \$1,582,744. Thus, for periods from and after April 1, 2013 Lessee shall be entitled to defer additional Percentage Rent in a remaining aggregate amount of \$528,672. Such remaining amount of Percentage Rent that is permitted to be deferred by Lessee from and after April 1, 2013 may be deferred by Lessee on a monthly basis in an amount each month equal to fifty percent (50%) of the amount by which the Percentage Rent payable for such month exceeds the Minimum Annual Rent payable for such month. Such monthly deferrals shall continue until the aggregate amount of such monthly deferrals from and after April 1, 2013 equals \$528, 672. All previous and future amounts of Percentage Rent deferred by Lessee pursuant to subsection 4.3.2 (as modified by this Section 6) shall constitute Deferred Rental Amounts. The principal amount of all Percentage Rent deferred through March 31, 2013 (i.e., \$1,582,744) has accrued interest at the Deferral Interest Rate set forth in subsection 4.3.3 of the Lease from the date of each deferral through March 31, 2013 in the aggregate amount of \$636,532.68, and shall continue to accrue interest at the Deferral Interest Rate until the date of repayment by Lessee. The amount of all Percentage Rent deferred from and after April 1, 2013 shall also accrue interest from the date of each deferral until the date of repayment, at the

Deferral Interest Rate. The outstanding principal and accrued interest on all Deferred Rental Amounts shall be paid by Lessee to County in accordance with the terms and provisions of subsection 4.3.3 of the Lease, except that notwithstanding any contrary provision of the First Amendment, all references to "Outside Completion Date" in clauses (x), (y) and (z) of subsection 4.3.3 of the Lease are hereby replaced with "Anticipated Commencement Date." As stated in the First Amendment, if the Lease is amended by the Reversion Amendment pursuant to subsection 5.5.3 of the Lease, then notwithstanding any contrary provision of the Lease, the principal unpaid balance of all Deferred Rental Amounts and all unpaid accrued interest thereon shall be immediately due and payable by Lessee to County as of the date that County elects to amend the Lease in accordance with the Reversion Amendment.

7. Audit. County and Lessee agree and acknowledge that County has completed an audit of the Percentage Rent payable by Lessee under the Lease for the period from January 1, 2008 through April 30, 2012, and that prior to the date of this Second Amendment Lessee has paid to County all Percentage Rent deficiency amounts (plus accrued interest under the Lease) payable by Lessee to County for such audit period.

8. Percentage Rent Category. County and Lessee hereby confirm their previous agreement retroactive to the Effective Date of the Original Lease that the percentage for the Percentage Rent category set forth in subsection 4.2.2(b) of the Lease is twenty percent (20%). Accordingly, subsection 4.2.2(b) of the Lease is hereby amended in full to read as follows retroactive to the Effective Date of the Original Lease:

“(b) TWENTY PERCENT (20%) of Gross Receipts from the rental or other fees charged for the use of dry storage facilities, landside gear lockers, landside storage space, boats, motors, tackle, recreational equipment, tools, equipment, launch and retrieving of small boats and from the sale of live bait.”

9. No Other Modifications. Except as expressly set forth in this Second Amendment, all terms, conditions, and provisions of the Lease remain in full force and effect and are unmodified, and each of the parties reaffirms and acknowledges its respective obligations under the Lease as amended hereby. This Second Amendment constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all previous correspondence or communications, whether written or verbal, pertaining thereto.

10. Encumbrance Holder Consent. Lessee represents and warrants to County that as of the date of this Second Amendment there are no deeds of trust, mortgages or other security interests that encumber Lessee's interest in the Lease or the Premises other than the "Deed of Trust" referenced in the Lender Consent attached to this Second Amendment. At County's election, this Second Amendment is conditioned upon (a) the accuracy of the foregoing representation and warranty, and (b) the execution and delivery by the beneficiary of such Deed of Trust not later than ten (10) days after the date of this Second Amendment of (i) the Lender Consent described above, and (ii) a Lender Consent in substantially the same format in recordable form attached to the Memorandum of Amendment No. 2 to Amended and Restated Lease referenced in Section 13 below. If the foregoing conditions are not satisfied, then County shall have the right to declare this Second Amendment null and void and of no force or effect.

11. County Costs. Lessee shall promptly following written demand from County reimburse County for the Actual Costs (as defined in the Lease) incurred by County in the review, negotiation, preparation and documentation of the matters that are the subject of this Second Amendment, including any lender consent or estoppel certificate pertaining to the Lease or this Second Amendment.

12. Counterparts. This Second Amendment may be signed in counterparts. Each counterpart represents an original of this Second Amendment and all such counterparts shall collectively constitute one fully-executed document.

13. Memorandum of Amendment. Concurrent with the execution and delivery of this Second Amendment, County and Lessee shall execute a Memorandum of Amendment No. 2 to Amended and Restated Lease Agreement and cause same to be recorded in the Official Records of Los Angeles County, California.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, County and Lessee have entered into this Second Amendment as of the date first set forth above.

COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

ESPRIT TWO LLC, a California limited liability company

By: _____
Cynthia A. Miscikowski, Manager

ATTEST:

SACHI HAMAI,
Executive Officer of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

JOHN F. KRATTLI,
County Counsel

By:  _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By:  _____

IN WITNESS WHEREOF, County and Lessee have entered into this Second Amendment as of the date first set forth above.

COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

ESPRIT TWO LLC, a California limited liability company

By: Cynthia A. Miscikowski
Cynthia A. Miscikowski, Manager

ATTEST:

SACHI HAMAI,
Executive Officer of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

JOHN F. KRATTLI,
County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

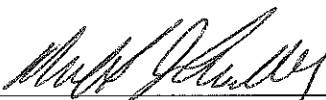
MUNGER, TOLLES & OLSON LLP

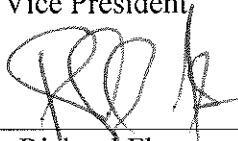
By: _____

LENDER CONSENT

The undersigned represents to County of Los Angeles that it is the current beneficiary under that certain [Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing] dated December 29, 2003, and recorded in the Official Records of Los Angeles County, California on December 30, 2003 as Instrument No. 03-3901333 (the "Deed of Trust"). As such beneficiary the undersigned hereby consents to the foregoing Amendment No. 2 to Amended and Restated Lease Agreement (Parcel 15U - Marina del Rey) (the "Second Amendment") and agrees that the Deed of Trust is subject and subordinate to such Second Amendment.

BANK OF THE WEST,
a California banking corporation

By: 
Name: Michael J. Campbell
Title: Vice President

By: 
Name: Richard Flores
Title: Senior Vice President